

**Kidd Electric Company and International Brotherhood of Electrical Workers, Local Union 322, AFL-CIO. Case 11-CA-15283**

August 27, 1996

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS BROWNING, COHEN, AND FOX

On April 29, 1994, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>1</sup> A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, the Acting Regional Director for Region 11, on December 16, 1994, issued a compliance specification and notice of hearing alleging the amount of backpay due. Thereafter, on March 6, 1995,<sup>2</sup> the Respondent filed an answer to the compliance specification, generally denying the allegations of the compliance specification and affirmatively alleging interim earnings. On October 18 the Respondent filed an amended answer adopting its original answer and providing additional information to support the defenses set forth in its original answer.

On October 31 the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. In the motion the General Counsel alleges that the Respondent's amended answer is procedurally deficient, in that it was neither sworn to by the Respondent or its attorney nor did it provide the post office address of the Respondent. He also argues that the amended answer superseded the original answer, and thus there is no proper answer. The General Counsel alternatively argues that Respondent's original answer contains only general denials and does not comply with the specificity requirements of Section 102.56(b) of the Board's Rules and Regulations. The General Counsel also states that the Respondent's attorney was provided with a copy of the applicable rules in a letter dated October 12 sent by the General Counsel. The General Counsel asks that the Respondent's amended answer be stricken in its entirety and that summary judgment be granted. Alternatively, the General Counsel moves that the Board grant Partial Summary Judgment deeming all allegations of the compliance specification to be true, with the exception of allegations 9(d) and (e), 10(d) and (e), and 11(d) and (e), which relate to interim earnings.

On November 7 the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. On November 28 the Respondent filed with the Board a motion in opposition to the General Counsel's Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. On the entire record, the Board makes the following

**Ruling on Motion for Summary Judgment**

Section 102.56 of the Board's Rules and Regulations states in part:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

We agree with the General Counsel that the Respondent's answers<sup>3</sup> to the backpay specification offer only a general denial of each of the allegations in the compliance specification and do not meet the requirements of Section 102.56 of the Board's Rules and Regulations. Section 102.56(b) makes clear that general denials of those matters are insufficient. Rather, if a respondent disputes the accuracy of the figures contained in the specification or the premises on which

<sup>1</sup> 313 NLRB 1178.

<sup>2</sup> All dates hereafter are 1995 unless otherwise noted.

<sup>3</sup> In light of the fact that the Respondent's original answer satisfied the procedural requirements of Sec. 102.56(a) of the Board's Rules and Regulations, we deny the General Counsel's motion to strike the Respondent's amended answer because of its procedural deficiencies.

they are based, the respondent must state why it disagrees, what it considers to be the applicable premises, and furnish the relevant supporting figures. The Respondent's answers fail to do this.

The assertions in the Respondent's response to the Notice to Show Cause are also insufficient. The claim that the discriminatees would have been laid off because of lack of work after February 1 is without merit. Specifically, the Respondent is attempting to re-litigate an issue that was decided in the unfair labor practice case.

Thus, we agree with the General Counsel that the Respondent's answers, insofar as they deny the amounts claimed on behalf of the named employees, fail to comply with the specificity requirements of Section 102.56(b) and (c). We therefore grant the General Counsel's Motion for Partial Summary Judgment. We shall deem all the allegations of the compliance specifications to be admitted to be true, with the exception of allegations 9(d) and (e), 10(d) and (e), and 11(d) and (e), which relate to interim earnings, as to which a general denial is sufficient. We shall direct a hearing for the limited purpose of determining interim earnings and interim expenses for each discriminatee.

### ORDER

It is ordered that the General Counsel's Motion for Summary Judgment and motion to strike the Respondent's amended answer in its entirety is denied.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted with respect to all the allegations in the backpay specification except as to interim earnings.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 11 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning interim earnings.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.